

REMARKS

35 U.S.C. § 112 Rejection

Claim 4 has been cancelled to overcome this rejection.

35 U.S.C. § 103(a) Rejection

Claims 1-7 and 17 have been rejected under 35 U.S.C § 103(a) as being unpatentable over U.S. Patent No. 4,104,409 to Vitzthum *et al.* ("Vitzthum") in view of the Abstract of Brauwissenschaft 1970 pp. 329-332 to J.W. Kloppe *et al.* ("Kloppe")

Looking first at independent claims 1 and 17, it can be seen that the claimed method produces a "hop flavored beverage [that] is light stable". Thus, the claimed invention solves the problem of providing a light stable beverage that has a hop flavor. In addition to claims 1 and 17, see, for example, page 22, lines 1-11 of the specification.

When assessing the obviousness of independent claims 1 and 17, "it is well settled that where the claimed invention solves a problem, the discovery of the source of the problem and its solution are considered to be part of the 'invention as a whole' under 35 U.S.C. 103". *Ex Parte Hiyamizu*, 10 USPQ 2d 1393, 1394-1395, (Bd.Pat.App. & Interf. 1988).

Reviewing Vitzthum and Kloppe, it is noted that none of these references teaches or suggests the problem of providing a light stable beverage that has a hop flavor. Even if it were assumed that the Applicants' specification provides motivation to look in the art for a solution to this problem, Vitzthum and Kloppe would not have suggested the Applicants' claimed solution.

The Office Action concedes that Vitzthum does not teach adding tannin extract by itself in the brewing process. Kloppe is cited as teaching producing beer solely

using a pure tannin extract. However, Kloppe states specifically that “there were no organoleptic influences” when adding the tannin extract (see the last line of the Kloppe Abstract). Thus, if the problem addressed by Applicants’ invention is the production of a light stable beverage that has a hop flavor, one would not be motivated to look for a solution in a prior art reference that specifically states that “there were no organoleptic influences”. In fact, one would reject the teachings of Kloppe when looking for a solution to the Applicants’ problem.

Accordingly, it is believed that the combination of Vitzthum and Kloppe fails to support an obviousness rejection of the pending claims. Therefore, it is respectfully submitted that independent claim 1 (and claims 2-3 and 5-7 that depend thereon) and independent claim 17 are patentable over Vitzthum and Kloppe.

The Office Action also makes note of the guidance provided by *In re Levin* wherein it is stated that an applicant must establish “a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function”. The claimed invention solves the problem of providing a light stable beverage that has a hop flavor. Thus, it is believed that the invention provides for a new, unexpected, and useful function and therefore, the claimed invention meets the requirements of *In re Levin*.


Conclusion

Therefore, it is submitted that the application is in condition for allowance. Favorable reconsideration is respectfully requested.

Other than the RCE and extension fees, additional fees are not believed to be needed for this amendment. However, if additional fees are needed, please charge them to Deposit Account No. 17-0055.

Respectfully submitted,

Dated: January 3, 2005

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